IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL MISC. APPEAL No. 1898 of 2004

NATIONAL INSURANCE CO.LTD.JODHPUR
V/S
ANAND GANDHI & ANR.

Mr. SANJEEV JOHARI, for the appellant / petitioner

Date of Order : 4.2.2005

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the appellant.

The only submission made is that the amount awarded is excessive. Suffice it to say that the appellant had not been granted any permission under Section 170 of the Motor Vehicles Act.

The record was requisitioned, and perusal thereof shows that an application under Section 170 was very much filed before the trial Court on 25.5.2004. However, that day, the Presiding Officer was not available, and therefore, the application was simply placed on the file, and the case was fixed on 5.6.2004. On that day again, the Presiding Officer was on leave, and the case was adjourned to 3.7.2004. On 3.7.2004, learned counsel for the appellant only prayed for time to lead evidence, which was opposed, and the evidence was closed. Significantly, that day also, the application under Section 170 does not appear to have been pressed.

That apart, a perusal of the application shows that in para-1 and 2 thereof, it was alleged that the owner and driver of the vehicle had been impleaded as parties, but they have not entered appearance, and the Court has ordered the matter to proceed against them exparte, which will cause prejudice to the interest of the insurer. As against this, it was on 11.12.2001, that appearance was put in, and on 2.4.2002, written-statement was filed on behalf of the owner and driver, and since then the counsels had been appearing regularly. Thus, on the face of it, the averment made in the application cannot be said to be correct, rather exfacie they are incorrect.

In these circumstances, the challenge to quantum cannot be permitted to the appellant.

The appeal thus, has no force, and is dismissed summarily.

( N P GUPTA ),J.

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